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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,050	12/30/2003	Pol O. Morain	D/A1633 (1508/3671)	6786
7590	11/07/2005		EXAMINER	RIMELL, SAMUEL G
Gunnar G. Leinberg, Esq. Nixon Peabody, LLP P.O. Box 31051 Rochester, NY 14603			ART UNIT	PAPER NUMBER
			2164	

DATE MAILED: 11/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/748,050	MORAIN ET AL.	
	Examiner	Art Unit	
	Sam Rimell	2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.



SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____.

- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki et al. (U.S. Patent 6,466,915).

Claim 1: FIG. 1 of Suzuki et al. discloses a monitoring system (100) that monitors the purchase of articles of goods at an electronic terminal or first device (FIGS. 17-23). The articles of goods are purchased on-line, so the information corresponds to digital content which was viewed.

The system also includes a usage data storage system (3) that stores usage data (order reception data). The usage data storage system (3) is further detailed in FIG. 13 and includes data associated with multiple usage events (multiple sales at distinct times and dates) and indicative of the manner in which the digital content is consumed (the manner of consumption is by viewing pages of data for articles that can be purchased, such as article “9990102” shown in FIG. 13).

The system includes a usage metrics system (table of FIG. 11) that processes usage data into a table.

Claim 2: The data of FIG. 11 is organized into a plurality of categories, including genre type (goods information---102).

Claim 3: The first device (electronic terminal) obtains its digital content from the merchant providing the goods.

Claim 4: Col. 17, lines 40-53, and in particular, lines 40-44 outline digital content recommendation system based on the information in the usage metrics. The customer may be recommended specific merchandise via digital advertisement (“goods introduction”) to the customer on the basis of past purchases.

Claim 5: The merchant uses the usage metrics system to select products to recommend to the customer via digital advertisement (“goods introduction”).

Claim 6: The merchant providing the content is a marketing company.

Claim 7: The selections which are made available to the customer are presented as digital documents (FIGS. 21, 22A-22C and 23).

Claim 8: See remarks for claim 1.

Claim 9: See remarks for claim 2.

Claim 10: See remarks for claim 3.

Claim 11: See remarks for claim 4.

Claim 12: See remarks for claim 5.

Claim 13: See remarks for claim 6.

Claim 14: See remarks for claim 1.

Claim 15: See remarks for claim 2.

Claim 16: See remarks for claim 3.

Claim 17: See remarks for claim 4.

Claim 18: See remarks for claim 5.

Claim 19: See remarks for claim 6.

Remarks

Applicant's arguments and amendments have been fully considered.

Applicant's primary argument is directed to the amended features for claim 1, 8 and 14.

In particular, applicant argues that Suzuki et al. deals with the consumption of physical items rather than the consumption of digital content, and does not record the consumption of digital content. While it is true that Suzuki et al. does deal with the purchase and consumption of physical items, this purchase and consumption is achieved by viewing digital content. The viewing of such digital content is considered to be the consumption of digital content, since the only way to consume visual information is to view it. In Suzuki et al., the user first views the digital content and then purchases the physical item associated with that content. It is the viewing of such content that constitutes the consumption of digital content.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 2164

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (571) 272-4084.



Sam Rimell
Primary Examiner
Art Unit 2164